IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.5656 of 2004**

DATE OF DECISION: October 26, 2006

PARBHATI ...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. R.K. KAPUR, ADVOCATE,
WITH MR. RAJ KUMAR GARG,
FOR THE PETITIONER.

MR.R.S.KUNDU, ADDL.A.G.HARYANA,
FOR RESPONDENT NOS.1 TO 4.

MR.SOM NATH SAINI, ADVOCATE,
FOR RESPONDENT NOS.5 TO 7.

ASHUTOSH MOHUNTA, J.

The prayer made in this petition under Articles 226/227 of the Constitution of India is to the issuance of a writ in the nature of certiorari quashing orders dated 24.8.2001 (Annexure P8), 10.5.2000 (Annexure P7), 7.6.1999 (Annexure P4) and the order dated 29.11.2002 (Annexure P11) passed respectively by respondent Nos.1 to 4 whereby the claim of the petitioner and his brothers for allotment of the land comprised in Khasra Nos.1972, 1974, 1978, 1979 and 1980, total measuring 4 Bighas and 11 Biswas situated in Narnaul on reserved price has been rejected. A prayer

for issuance of a writ in the nature of mandamus directing the State-respondents to allot the land in question in his favour as per the policy decision of the State of Haryana dated 1.11.2001 (Annexure P9).

In nutshell the case of the petitioner is that he along with his brothers Hem Raj, Phool Singh, Shyam Lal, Banwari Lal and Jagdish submitted an application dated 3.7.1989 for allotment of the afore-mentioned land in their favour on the basis of the policy decision of the Government of Haryana dated 11.7.1988 (Annexure P1) as they were in occupation of the said land prior to the year 1954. Their grievance is that without considering their claim the said land was auctioned to respondent Nos.5 to 7 on 23.12.1998 without any notice to them. The petitioner and his brothers filed objections to the auction of the land in dispute in favour of respondent Nos.5 to 7. The objections filed by the petitioner were rejected by the Chief Settlement Commissioner (respondent No.2) vide order dated 10.5.2000 (Annexure P7). The revision petition filed by the petitioner was dismissed by the Commissioner & Secretary, Rehabilitation Department (respondent No.1) vide order dated 24.8.2001 (Annexure P8). Thereafter the petitioner filed another application dated 28.1.2002 for allotment of the land in dispute in view of the policy decision of the Government of Haryana dated 1.11.2001 (Annexure P9) whereby it was decided to transfer the rural/urban evacuee lands to the unauthorized occupants. The said application was rejected by the Naib Tehsildar and Managing Director, Narnaul vide order dated 29.11.2002 (Annexure P11) on the ground that the land in question had already been auctioned in favour of respondent Nos.5 to 7 on 23.12.1998 and the auction had been confirmed by the Chief Settlement Commissioner vide order dated 30.9.2002. To impugn the said

orders the petitioner filed C.W.P.No.1381 of 2003 which was dismissed in limine by a Division Bench of this Court vide order dated 28.12.2003 (Annexure P12). To challenge the said order of the Division Bench of this Court the petitioner filed Civil Appeal No.1251 of 2004, which was allowed by the Hon'ble Supreme Court on 20.2.2004 (Annexure P13) with the observation that the "High Court should have disposed of the writ petition by dealing with the contentions raised by the appellant by a reasoned order." Now the petitioner has filed this writ petition to impugn the orders passed by the Revenue Authorities rejecting his claim to the transfer of the land in his favour.

Detailed written statements have been filed by the respondents in order to controvert the claim made by the petitioner in the present petition. The petitioner has also filed replications to the respective written statements filed by the respondents.

It has been contended by the learned counsel for the petitioner that sale of the land in dispute by way of auction in favour of respondent Nos.5 to 7 was wrong as the petitioner was entitled to the transfer of the land in his favour in view of the policy decision of the State of Haryana dated 11.7.1988 (Annexure P1) as he along with his brothers had been occupation of the said land prior to the year 1954. In view of the application dated 3.7.1989 (Annexure P2) submitted by the petitioner and his brothers for transfer of the land in their favour, the authorities concerned could not auction the said land in favour of respondent Nos.5 to 7 on 23.12.1998.

In the written statement filed by the State of Haryana it has been stated that neither any application was ever addressed by the petitioner

to the concerned authorities pursuant to the press note dated 11.7.1988 (Annexure P1) nor his claim was covered under the said policy decision as the land in question is an urban property whereas the policy decision dated 11.7.1988 of the State of Haryana related to disposal of rural/sub-urban evacuee lands only. The objection petition also dismissed by the Chief Settlement Commissioner vide order dated 10.5.2000 (Annexure P7) which order was upheld by the Commissioner vide order dated 24.8.2001 (Annexure P8) as the petitioner had even failed to deposit the prescribed challenge money for challenging the auction proceedings dated 23.12.1998. It has further been contended that the brothers of the petitioners, namely, Banwari Lal, Hem Raj, Sham Lal and Jagdish Parkash had withdrawn the objection petition against the auction dated 23.12.1998 along with an affidavit. Thereafter, the Chief Settlement Commissioner rejected the objection petitions and confirmed the auction in question under the rules.

We have heard the learned counsel for the parties and examined the case file meticulously.

It is the claim of the petitioner that he along with his brothers had submitted an application dated 3.7.1989 (Annexure P2) for transfer of the land in question pursuant to the policy decision of the Government of Haryana dated 11.7.1988 (Annexure P1). When the petitioner and his brothers Banwari Lal etc. pointed out that their application for transfer of the land sold in auction was pending with the Naib Tehsildar, the Chief Settlement Commissioner (respondent No.2) directed him (Naib Tehsildar) to decide the said application before the next date of hearing i.e. 8.7.1999. In this regard the report submitted by the Naib Tehsildar (Sales), which finds mention in his order dated 7.6.1999 (Annexure P4), is to the following

effect:-

"Accordingly S/Shri Banwari etc. were summoned in this office on 3.5.99. Shri Banwari himself and on behalf of other brothers namedly S/Shri Hem Raj, Sham Lal & Jagdish and Sh.Prabhati along with one Sh.lal Chand Kataria his Special Power of Attorney attended this office. All of them were asked to furnish the copies of applications referred to in the court of Ld.C.S.C. They are that they have been in possession with the Kh.No.1972, 1973, 1977, 1978 & 1980 since along and have raised construction over it. But they produced only a copy of notice dated 27.6.89 whereby they were directed to attend this office o n 3.7.89 with reference to their application for transfer of land, so that the report be sent to Govt. They also submitted a copy of the application which was not addressed to any authority but was received in this office on 3.7.89 say the date of hearing given in the aforesaid notice. However, on scrutiny it was found that a report in this regard was sent to the Joint Secretary to Govt. Haryana Rehabilitation Deptt. vide this office Memo.No.565 dated 5.7.89 with subject title "Application of Shri Parshotam Hem Raj etc. It means a report was called for from the Govt. which along their application dated 3.7.89 referred to above was sent to Govt. They referred to another application

dated 14.3.95 addressed to C.S.C. & N.T.(S) Rewari. It was also a formal application which was not given in accordance with any presss note say dated 11.7.88 for transfer of Urban Evacuee Proplerty and for transfer of rural agricultural land. No other application was referred to by them. Meanwhile Kgo (Sales) has reported that the land in question is an Urban Agricultural Land since long and no press note/notification has ever been issued by the State Govt. to transfer such land.

Therefore, it is concluded that no application of S/s Banwari etc. under any press note is pending in this office. This fact has also been ascertained from the entries in the register in which applications received under press note have been entered. So their plea that they have submitted applications under the provisions of Govt. notification Press note is hereby rejected. More so there is also a general stay from the Govt. to consider any application of transfer of land."

The relevant clauses (a) and (h) of the policy decision dated 11.7.1988 (Annexure P1) are to the following effect:-

"(a) Those persons who are in cultivating possession of rural evacuee agricultural land since Kharif 1985 or earlier may be allowed to purchase the land submit to a maximum limit of 5 standard acres including their

own holdings, if any, as on 31.12.85. Marginal adjustment upto one Std. Acre may be allowed to be made by the Settlement Commissioner in suitable cases."

(h) The last date for submission of application will be three months from the date of publication of the Press Note issued in this behalf."

A perusal of clause (a) shows that the policy decision dated 11.7.1988 (Annexure P1) related to "rural evacuee agricultural land" and not to the urban evacuee agricultural land. Certainly the land in dispute is an urban property being situated in the City of Narnaul. Clause (h) of the policy decision dated 11.7.1988 (Annexure P1) prescribes the last date for submission of application as "three months from the date of publication of the Press Note issued in this behalf." There is no mention in the writ petition as to on which date the press note was published. In the absence of date of publication of the press note, the Court has no option but to presume that the petitioner submitted the application, if any, pursuant to the policy decision dated 11.7.1988. As per para 3 of the petition, the petitioner along with his brothers "applied for allotment on 3.7.1989 (copy annexed as ANNEXURE P-2)." These facts clearly show that the claim of the petitioner and his brothers for allotment of the land situated at Narnaul was not covered under the Policy Decision of the State of Haryana dated 11.7.1988 (Annexure P1) nor they had submitted the application for allotment within the prescribed limit of three months. The transfer of the Urban Evacuee Land in favour of the unauthorized occupants was ordered by the State Government vide letter dated 1.11.2001 (Annexure P9).

Though in pursuance of said policy decision the petitioner submitted his application dated 28.1.2002 (Annexure P10), but by that time the land in dispute had already been sold in auction held on 23.12.1998 in favour of respondent Nos.5 to 7. The sale by auction was confirmed by the Chief Settlement Commissioner after disposing of the objection petitions filed by various persons, including the petitioner and his brothers.

Undisputedly, the petitioner and his brothers filed objection petitions against the auction of the land in dispute on 23.12.1998. The brothers of the petitioner deposited the challenge money in support of their higher offers, but the objection petition filed by the petitioner was dismissed in default on 8.12.1999 for non-prosecution. It has been observed by the Chief Settlement Commissioner in his order dated 10.5.2000 (Annexure P7), the operative part of which is reproduced as under:-

> *"I have given a careful thought to the submission of the parties. A bare perusal of the proceedings of the case go to show that the objections of Sh.Parbhati had been dismissed in default twice. On 22.12.1999 it had been restored on the undertaking given by Mr.Sanjay Mittal, Advocate that the challenge money would be deposited in this case within 10 days. Today, the learned counsel could not give any cogent reason for restoration of the case which was dismissed in default on 9.2.2000. There is also a non compliance of orders dated 22.12.1999 of my predecessor for challenging the auction Neither the objector has fulfilled the required conditions nor has been serious in respect of his objection petition. The case has been dismissed in default twice, and the*

orders dated 9.2.2000 have also not been complied with. Accordingly I find no merit in the restoration application and the same is accordingly rejected."

Not only this, the brothers of the petitioner, namely, Hem Raj, Sham Lal, Banwari Lal and Jagdish Parshad filed application dated 13.12.2000 whereby they withdrew their objection petition against the sale of the land in dispute by way of auction in favour of respondent Nos.5 to 7. As already mentioned, the objection petition filed by the petitioner was dismissed in default by the Chief Settlement Commissioner and the order passed by him was upheld by the Commissioner in the revision filed by the petitioner. The objection petition filed by his brothers was withdrawn by them vide their application dated 13.12.2000. After the disposal of all the objection petitions, the Chief Settlement Commissioner had confirmed the sale in favour of respondent Nos.5 to 7 by way of auction dated 23.12.1998. The application dated 28.1.2002 (Annexure P10) submitted by the petitioner for transfer of the property in dispute, which is undisputedly an urban property, pursuant to the policy decision dated 1.11.2001 (Annexure P9) was a belated one as by that time the sale in favour of respondent Nos.5 to 7 had already been confirmed by the Chief Settlement Commissioner.

In the light of the above, we do not find any infirmity in the impugned orders. This petition is dismissed being without any merit.

(ASHUTOSH MOHUNTA)
JUDGE

October 26, 2006
Gulati

(NIRMAL YADAV)
JUDGE